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DAGNER *v.* DAGNER.

June 12, 1919.

[99 S. E. 567.]

Divorce (§ 171*)—Conclusiveness.—Since a decree denying divorce for desertion, either a vinculo or a mensa, necessarily determined that defendant had not at any time prior to the institution of that suit deserted her husband, it barred a suit for divorce for desertion by the same plaintiff against the same defendant, begun less than three years afterwards.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 748; 17 Va.-W. Va. Enc. Dig. 332.]

Appeal from Law and Chancery Court of City of Norfolk.

Bill by John Dagner against Rosa Dagner. Decree for complainant, and defendant appeals. Reversed, and bill dismissed.

L. B. Cox, of Norfolk, for appellant.

J. M. Harrison, of Norfolk, for appellee.

NORFOLK & W. RY. CO. *v.* WHITEHURST.

June 12, 1919.

[99 S. E. 568.]

1. Master and Servant (§ 129 (7)*)—Injuries to Fireman—Proximate Cause—Unlighted Switch Target.—Where fireman, to recover fallen tool, dropped from engine while running slowly in night-time, and ran into unlighted switch target in attempting to regain engine, whereby he was injured, the unlighted switch target is the proximate cause of the injury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 691; 10 Va.-W. Va. Enc. Dig. 373, 423.]

2. Master and Servant (§ 112 (4)*)—Injuries to Fireman—Proximate Cause—Unlighted Switch Target.—Where a switch target is unlighted at night, and fireman of switch engine is injured by running into it in attempting to get on slowly moving engine, the injury was a "foreseeable" one, though target was not designed to prevent such injuries, and the master is liable.

4. Appeal and Error (§ 999 (1)*)—Review—Verdict.—Where an issue of fact is fairly submitted to jury, their verdict is conclusive.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

4. Master and Servant (§ 217 (1)*)—Injuries to Servant—Assumption of Risk.—A servant assumes the risks that are usually and or-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.